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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2010- 204**

13 **CAROL VIRGINIA HERNANDEZ-**
14 **FLASCHNER**
15 **29036 Marilyn Drive**
16 **Canyon Country, CA 91351**
17 **Registered Nurse License No. 314381**
18 **Public Health Nurse Certification No. 31675**

A C C U S A T I O N

Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing ('Board'),
23 Department of Consumer Affairs.

24 **Registered Nurse License**

25 2. On or about March 1, 1980, the Board issued Registered Nurse License Number
26 314381 to Carol Virginia Hernandez-Flaschner ('Respondent'). The registered nurse license was in
27 full force and effect at all times relevant to the charges brought herein and will expire on January
28 31, 2010, unless renewed.

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1 **Public Health Nurse**

2 3. On or about October 9, 1981, the Board issued Public Health Nurse Certification
3 Number 31675 to Respondent. The public health nurse certification was in full force and effect at
4 all times relevant to the charges brought herein and will expire on January 31, 2010, unless
5 renewed.

6 **STATUTORY PROVISIONS**

7 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
8 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
9 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
10 Nursing Practice Act.

11 5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not
12 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
13 to render a decision imposing discipline on the license. Under Code section 2811, subdivision
14 (b), the Board may renew an expired license at any time within eight years after the expiration.

15 6. Code section 118, subdivision (b), provides that the suspension, expiration, or
16 cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed
17 with a disciplinary action during the period within which the license may be renewed, restored,
18 reissued or reinstated.

19 7. Code section 2761 states, in pertinent part:

20 The board may take disciplinary action against a certified or licensed
21 nurse or deny an application for a certificate or license for any of the following:

22 (a) Unprofessional conduct, which includes, but is not limited to, the
23 following:

24 (1) Incompetence, or gross negligence, in carrying out usual certified or
25 licensed nursing functions.

26 **REGULATORY PROVISIONS**

27 8. California Code of Regulations, title 16, section 1442, states:

28 As used in Section 2761 of the code, 'gross negligence' includes an
 extreme departure from the standard of care which, under similar circumstances,
 would have ordinarily been exercised by a competent registered nurse. Such an

1 extreme departure means the repeated failure to provide nursing care as required or
2 failure to provide care or to exercise ordinary precaution in a single situation which
3 the nurse knew, or should have known, could have jeopardized the client's health or
4 life.

5 9. California Code of Regulations, title 16, section 1443, states:

6 As used in Section 2761 of the code, 'incompetence' means the lack of
7 possession of or the failure to exercise that degree of learning, skill, care and
8 experience ordinarily possessed and exercised by a competent registered nurse as
9 described in Section 1443.5.

10 COST RECOVERY

11 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
12 administrative law judge to direct a licensee found to have committed a violation or violations of
13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
14 enforcement of the case.

15 BACKGROUND

16 11. B.H., 13 year-old patient whose mother took her to the UCLA Medical Center
17 Emergency Room due to an ongoing complaint of abdominal pain and constipation for
18 approximately 3 days. B.H.'s abdomen was rigid, tender, and distended. Respondent triaged
19 B.H.; however, as time went on, B.H.'s mother became increasingly concerned about her
20 daughter's condition. She told Respondent she was concerned and Respondent offered a wheel
21 chair for B.H. B.H.'s condition worsened and her mother summoned another nurse to evaluate
22 B.H. Due to her grave condition, that other nurse assessed B.H. and immediately admitted her to
23 see a physician. B.H. was subsequently taken to the operating room, where she expired during
24 surgery.

25 FIRST CAUSE FOR DISCIPLINE

26 (Gross Negligence)

27 12. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a)(1),
28 on the grounds of unprofessional conduct, in that on or about May 9, 2003, while on duty as a
registered nurse at UCLA Medical Center Emergency Room, Los Angeles, California,

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Respondent committed acts constituting gross negligence, as defined in California Code of Regulations, title 16, section 1442, as follows:

a. Respondent failed to take a complete and accurate assessment of B.H. Respondent failed to assess B.H.'s respiratory and cardiovascular systems. Respondent's gastrointestinal system and skin assessments were not complete. Further, Respondent failed to recognize the possible implications of not being able to obtain a blood pressure reading.

b. Respondent failed to recognize the abnormal respiratory rate and heart rate for an adolescent with days of abdominal pain rated at 6/10. Respondent's inadequate assessment and failure to recognize and appreciate the abnormal finding that led to the inaccurate acuity classification of urgent.

c. Respondent failed to follow hospital policy in triaging B.H. Hospital policy includes a list of emergent complaints, with the acuity classification of urgent, one of which is suspected acute abdomen.

SECOND CAUSE FOR DISCIPLINE

(Incompetence)

13. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that on or about May 9, 2003, while on duty as a registered nurse at UCLA Medical Center Emergency Room, Los Angeles, California, Respondent committed acts constituting incompetence, as defined in California Code of Regulations, title 16, section 1443, as follows:

a. Respondent failed to take a complete and accurate assessment of B.H. Respondent failed to assess B.H.'s respiratory and cardiovascular systems. Respondent's gastrointestinal system and skin assessments were not complete. Further, Respondent failed to recognize the possible implications of not being able to obtain a blood pressure reading.

b. Respondent failed to recognize the abnormal respiratory rate and heart rate for an adolescent with days of abdominal pain rated at 6/10. Respondent's inadequate assessment and failure to recognize and appreciate the abnormal finding led to the inaccurate acuity classification of urgent.

1 c. Respondent failed to follow hospital policy in triaging B.H. Hospital policy includes
2 a list of emergent complaints, with the acuity classification of urgent, one of which is suspected
3 acute abdomen.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct)**

6 14. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a), on
7 the grounds of unprofessional conduct, as more particularly set forth in paragraphs 14 and 15,
8 above.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Registered Nursing issue a decision:


12 1. Revoking or suspending Registered Nurse License Number 314381, issued to Carol
13 Virginia Hernandez-Flaschner;

14 2. Revoking or suspending Public Health Nurse Certification Number 31675, issued to
15 Carol Virginia Hernandez-Flaschner;

16 3. Ordering Carol Virginia Hernandez-Flaschner to pay the Board of Registered Nursing
17 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 125.3; and,

19 4. Taking such other and further action as deemed necessary and proper.

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21 DATED: 10/12/09

for 
LOUISE R. BAILEY, M.Ed, RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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